



A New Orleans Style Flood Could it Happen Here?

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Aging levies and archaic state laws could bring catastrophic flooding to the Garden State.

The New Orleans flood reminds us of man's fickle attempt to harness nature. Our colonial predecessors made similar attempts. King George chartered Meadow Companies to reclaim marshland in the Province of New Jersey. In Greenwich and Logan Townships in Gloucester County, the Repaupo Meadow Company was formed to reclaim such marshlands. A levee was constructed creating a barrier against Delaware River flooding and tide gates were installed to allow drainage of the meadows at low tide. Development in the marshes and adjacent upland ensued due to the protection afforded by these levees and tidegates.

When the Province of New Jersey became the State of New Jersey, numer-

ous statutes chartering Meadow Companies were adopted and later ratified by various New Jersey legislatures. Today these entities still exist. However, in most instances they are "phantoms" evidenced only by the deteriorating levees and tide gates that were spawned by "existing" but powerless, penniless associations of marsh owners. If action is not taken to reverse the decline of these flood-control structures, another man-made disaster will occur. Such an event is as certain as the New Orleans flood.

The Role of the Meadow Companies

Under several Acts, thousands of acres of tide marshes have been reclaimed and made arable in New Jersey.¹ During their time, the Meadow Companies were a great success. Unfortunately, time has passed them by.

As New Jersey emerged from an agrarian economy to a commercial/industrial economic powerhouse, the market for salt hay that the land once produced dried up. Increasingly, the ability of Meadow Companies to fund their operations faltered.

In addition to the changing market economy, the adoption of environmental protection laws reduced the fair market value of meadow lands to a nominal amount. However, these levees continue to provide many benefits today. They safeguard agricultural, residential, commercial and industrial areas; protect the agricultural and domestic water supplies from saltwater intrusion; and provide mosquito control and other benefits, including fish and wildlife preservation.²

Yet many of the levees and other flood control structures are in critical



condition. Some have not been upgraded for nearly half a century. Consequently, they are ripe for failure.³ If they do fail, the ramifications will extend far beyond the confines of the Meadow Companies' original jurisdiction.

The Statewide Implications In response to the flood protection, watersheds were developed. Homes and businesses were built. Industries seeking access to shipping located factories near and within the marsh areas. Railroads were constructed to serve these areas. Highways were built to accommodate the development encouraged by the infrastructure created by the now all-but-defunct Meadow Companies.

Moreover, in earlier times many industries operated in and adjacent to the

of ignoring the problem forced legislative redress by adoption of the Superfund Law and Spill Act).

In October 2001, then-Senator Raymond Zane requested then-NJDEP Commissioner Robert Shinn to assist in the restoration of the Repaupo Meadow Company levee and tide gates. By letter dated October 9, 2001 Commissioner Shinn explained that the Repaupo Meadow Company was legally responsible for the levee and tide gates. NJDEP had no authority or jurisdiction to direct repairs to the structures.⁵

Consequently, Gloucester County municipalities could only look to their senatorial and congressional representatives to attempt to secure funds to repair the structures. In the 1960s

Consequently, any legal successor to a Meadow Company must be empowered to control the infrastructure so as not to deprive marsh owners of their property without due process of law. The significance of this property right cannot be ignored. Federal assistance requires the local sponsor to have the legal authority to allow permanent replacement of levees and tide gates.⁹ Obtaining easements from individual meadow owners is a time-consuming, logistical nightmare.

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marshes engaged in on-site burial of chemical wastes. Flooding of these old burial sites could cause chemicals to escape and contaminate drinking water aquifers. Surface water would suffer similar contamination. In addition, this same aquifer would be subjected to salt-water contamination from the Delaware Bay in the event of levee failure.⁴ The statewide implications are irrefutable.

Given this history, the failure of these aging and deteriorating Meadow Company-built flood control structures have regional, state and federal implications with incalculable adverse economic and public health consequences. Just look at New Orleans.

The State's Abandonment of Flood Control Infrastructure Forty years have passed since the recommendation that the Repaupo Meadow Company tidegate and levee be restored and improved. Only temporary repairs have been made and only in response to "flood events." The state created the Meadow Companies. However, instead of assuming responsibility for these decrepit flood control structures orphaned by these Meadow Companies, the state has abandoned them (not unlike hazardous-waste sites arising during the same period until the public health consequences

and 1970s, the Repaupo Meadow Company made numerous, futile attempts to obtain federal assistance because it had no funds to satisfy local cost-sharing requirements.

Moreover, these municipalities must compete nationwide with thousands of other municipal applicants fighting over a dwindling supply of federal funding. And, as noted, the federal statutes require cost-sharing and ongoing maintenance by local sponsors. The sole source of funding is for a post-flood event, i.e., a flood emergency.⁶ Does New Orleans come to mind?

Seeking a Legal Successor to the Meadow Companies Simple repeal of the infirm and ineffectual Meadow Companies only exacerbates the problem. A 1904 statute authorized individual meadow owners to unilaterally withdraw and escape the duties imposed by the Meadow Company. The law was invalidated. The Supreme Court in *Cox v. American Dredging Co.*⁷ concluded that the meadow company statutes created vested property rights in each owner within the Meadow Company. The 1904 law was unconstitutional because it divested these owners of property rights without compensation, and without due process of law.⁸

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New Jersey can no longer turn a blind eye to its failing flood-control infrastructure.

However, a legitimate, statutory descendent of a Meadow Company could enjoy all of the rights, privileges, and immunities conferred on these ancestral entities that created the flood-control structures in the first instance. Such a successor would resolve the "ownership" problem effectively.

A Prescription for Action Space does not permit the listing of all possible approaches to creating an effective and legal successor to the colonial Meadow Companies. However, the following should be considered:

1. The state should undertake an immediate inventory of all flood-

control structures created by Meadow Companies. It should contribute funding for improvements, in conjunction with federal sources if possible, similar to its participation in the Green Brook Flood Control Project.

2. A statute should authorize the creation of a quasi-public entity to assume future maintenance responsibilities of these abandoned flood-control structures and to contract for improvements through state/federal funding.
3. For the new entity replacing Meadow Companies, the funding of future maintenance obligations must be addressed. Because of the regional and statewide implications of centuries of economic development and related transportation systems dependent upon flood control structures, the cost of maintaining the structures must be shared by all beneficiaries of the flood control system (not just the host communities where the levees and tide gates are located). In this regard, the technical expertise of the U.S. Army Corps of Engineers and the USDA Natural Resources Conservation Service (NRCS) and county planning agencies could be used to quantify and qualify the flood plain issues for watersheds (providing an objective, equitable basis for financial contributions).
4. Membership within the entity succeeding the Meadow Companies should include an advisory class, voting class, and a Meadow Company class. The advisory class would consist of federal and state officials having expertise in regulatory and funding programs associated with watershed systems.

The voting class should be limited to member municipalities and counties so the entity could qualify for federal/state funding (which may be proscribed if federal or state representatives were permitted to vote on actions to be taken by the entity regarding flood-control projects with state or federal involvement).

The Meadow Company class would be comprised of the historical Meadow Company and its individual



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owners. The entity would be authorized to execute "joint participation agreements" with Meadow Companies (or individual meadow owners) falling within its jurisdiction on condition that they were sufficiently viable to operate successfully. Establishing this class would also protect the property rights of individual owners. Moreover, it would eliminate the possible disqualification from receipt of state or federal funding (which may prohibit private party recipient of grant funds). Finally, it would diminish the public cost of operation and maintenance for those portions of the flood control structures that private owners had a vested interest in controlling.

5. The state should also fund a more extensive inventory (beyond the Meadow Company jurisdiction), in conjunction with the resources of the Corps, the NRCS, and county planning agencies that have developed extensive GIS databases accurately depicting the location, eleva-

tions, and extent of marshlands impacted by flood-control structures. By making assistance grants to county and/or municipal bodies, an inventory could be quickly developed with detailed information about the genesis of the structures, historical data regarding the last improvements to the structures, and prioritization of those structures in most immediate need of repair.

6. Because not all meadow companies have the same problem nor the same infrastructure nor the same threat to population centers in the event of infrastructure failure, any legislation pertaining to Meadow Companies "restructuring" should be permissive, not mandatory (or perhaps authorize the "sharing of power" with Meadow Companies).

New Jersey can no longer turn a blind eye to its failing flood-control infrastructure. Flood protection is an essential police power function that can neither be abandoned nor relegated to municipal and/or county govern-

ments whose constituents are already overburdened by real estate taxes.

The state can either step up to the plate, meet its obligations, and avert a catastrophe; or we can wait for the next "Katrina" and try to explain why we did nothing. ▲

1 History of the Counties of Gloucester, Salem and Cumberland New Jersey, Thomas Cushing, M.D. and Charles E. Shepherd, Esq. (Philadelphia: Everts & Peck, 1883) at page 167.

2 NRCS presentation at November 9, 2005 conference at the Cumberland County Cooperative Extension Center: "South Jersey Flood Protection Problems and Opportunities."

3 Ibid.

4 "Preliminary Estimates of Costs and Benefits of Alternative Solutions for Flood Damage Reduction -Repaupo Creek Watershed, Gloucester County, New Jersey." dated April 1996, prepared by USDA Natural Resources Conservation Service in cooperation with Gloucester County Soil Conservation District.

5 October 9, 2001 letter from Commissioner Shinn of NJDEP to Senator Raymond Zane.

6 See footnote 2 and 4.

7 Cox v. American Dredging Co., 80 N.J.L. 645, 51 Vroom 645, 77 A. 1025 (N.J.Sup. 1910).

8 Id. at 648-649 ("created a servitude in favor of each of the tracts upon all the other tracts").

9 See footnote 2 and 4.

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